

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JEFFREY VAN OSS,

Plaintiff,

Case No. 09-C-1069

STERLING AVIATION, LLC,
a limited liability company,

Defendant.

**MOTION TO DISMISS PLAINTIFF'S AMENDED
COMPLAINT FILED ON JUNE 18, 2010**

Defendant, Sterling Aviation, LLC, by and through its attorneys, Cook & Franke S.C., pursuant to Federal Rules of Civil Procedure, Rules 12(b)(1) and 12(b)(6) and in accordance with Local Rule 6.04, hereby requests dismissal of plaintiff's amended complaint filed on June 18, 2010 on the following bases:

1. Plaintiff's amended complaint adds a Title VII cause of action that is not related to or grows out of the Discrimination Complaint filed by plaintiff with the U.S. Equal Employment Opportunity Commission ("EEOC") as required for this action.
2. The amended complaint filed on June 18, 2010 alleges Title VII retaliation based upon his opposition to gender discrimination. Plaintiff's previously filed EEOC charge upon which this Title VII action is based, does not provide any allegations or factual support relating to the allegations of retaliation as alleged in the amended complaint.
3. As the Title VII retaliation claim does not relate to the predicate EEOC charge as required by Title VII, plaintiff has failed to exhaust his administrative remedies. As a matter of law, the EEOC charge filed by plaintiff is not a proper basis for the Title VII allegations

contained in plaintiff's amended complaint and plaintiff has failed to exhaust his administrative remedies as to these claims.

The facts, arguments and authorities in support of this Motion are fully set forth in Defendant's Memorandum in Support of Defendant's Motion to Dismiss Plaintiff's Amended Complaint and the Affidavit of Ann Barry Hanneman in Support of Defendant's Motion to Dismiss, which is incorporated by reference. Based upon the above, defendant, Sterling Aviation, LLC, respectfully requests the Court dismiss plaintiff's amended complaint based upon the failure of plaintiff's pleading to state a claim upon which relief may be granted.

Dated: July 8, 2010

s/ Ann Barry Hanneman
Attorneys for Defendant
Sterling Aviation, LLC
Ann Barry Hanneman
S.B.W: #1008899
COOK & FRANKE S.C.
660 East Mason Street
Milwaukee, WI 53202
Phone: (414) 271-5900
Fax: (414) 271-2002
Email: abarry@cf-law.com